RECENT IMPORTANT DECISIONS

ATTORNEY AND CLIENT—ATTORNEY'S CHARGING LIEN.—Having agreed by contract to pay his attorney fifty percent of the proceeds recovered, the client, while suit was pending, and without the consent of his attorney, settled with the defendant for $30. The attorney then gave notice of his claim to the defendant, and the district court, after hearing the case, gave judgment to the plaintiff attorney for $100. There was a statute (N. J. LAWS OF 1914, ch. 201, p. 410) which gave a lien to an attorney on the proceeds of a settlement out of court. *Held,* the action of the district court was unwarranted, in the face of the written contract, which entitled the attorney to only fifty percent of the settlement. *Levy* v. *Public Service Ry. Co.* (N. J. 1916), 98 Atl. 847.

It has been said that the attorney's charging and possessory liens were unknown at the common law, but as far back as *Reed* v. *Dupper* (1795), 6 T. R. 361, they were recognized by Lord KENYON; see also the reference to such liens in the recent case of *Prichard* v. *Fulmer* (New Mex., 1916), 159 Pac. 39. Of recent years such liens have been largely regulated by statute. In the absence of notice to the adverse party, and of a statute protecting the lien, the parties generally may compromise or settle a cause of action before judgment, regardless of the rights of the attorneys, unless the compromise or settlement was for the purpose of depriving the attorneys of their fees. *Kaufman* v. *Keenan,* 2 N. Y. Supp. 395. If the settlement, however, provides for the lien, it will be upheld. *Lee* v. *Vacuum Oil Co.,* 126 N. Y. 579, 27 N. E. 1018. After judgment, and after the lien has been properly perfected by notice or otherwise, a compromise cannot prejudice the attorney's right to enforce the judgment to the extent of the lien. 4 CYC. 1020. The tendency of the courts is to protect the attorney, as an officer of the court, even in cases of a settlement by the client before notice by the attorney of his lien. In *Weeks* v. *Wayne Circuit Judges,* 73 Mich. 256, satisfactions of judgments entered by the client were set aside in order to reinstate the attorney's lien, that he might enforce it to the extent of his lien by execution. Some courts have even gone so far as to allow an attorney, having a lien on the cause of action, to proceed to try the case to determine and collect the amount of his fee, after a settlement by his client. *Johnson* v. *McCurry,* 102 Ga. 471. See also *St. Louis etc. Ry. Co.* v. *Blaylock,* 117 Ark. 504, 175 S. W. 1170; *Bell* v. *Commissioners,* 26 Colo. App. 192, 141 Pac. 861. By the strict rule, however, the attorney is left to his action on the quantum meruit in case of settlement before judgment and notice. *Day* v. *Larson,* 30 Ore. 247; *Succession of Carbajal,* 139 La. —, 71 So. 774.

BANKRUPTCY—LIABILITY FOR MALICIOUS INJURY TO PROPERTY NOT DISCHARGED.—Plaintiff pledged stock certificates to defendant, who sold them without the former's authority. Defendant set up his subsequent discharge in bankruptcy as a defense to a suit for such conversion. On the ground

that the liability was for willful and malicious injury to property, within the meaning of § 17 (2), as amended in 1903, the debt was *held* not to be discharged. *McIntyre* v. *Kavanaugh* (1916) 37 Sup. Ct. 38.

This claim was based on an implied contract and hence provable under § 63 (4). *Crawford* v. *Burke,* 195 U. S. 176. The sole question is whether there must be malice toward the individual personally in order to satisfy the requirements of § 17 (2). The court says that to hold affirmatively would be too narrow a construction, quoting with approval the leading case of *Tinker* v. *Colwell,* 193 U. S. 473, 485, 487, to the effect that the cause of action need not be based upon special malice. It is said in *Peters* v. *United States ex rel Kelley,* 177 Fed. 885, 101 C. C. A. 99, that "the term 'willful and malicious injury' as used in § 17 (2) of the Bankruptcy Act * * * does not involve ill will or hatred as a state of mind." In *Bromage* v. *Prosser,* 4 Barn. & Cres. 347, which was an action of slander, Mr. Justice BAYLEY laid down the rule that "Malice in common acceptation means ill will against a person, but in its legal sense, it means a wrongful act, done intentionally, without just cause or excuse. If I maim cattle, without knowing whose they are * * * it is done of malice because it is wrongful and intentional. * * * It equally works an injury whether I meant to produce an injury or not." What is contemplated, according to the *Tinker* case, followed in the principal case, is a "willful disregard of what one knows to be his duty, an act which is against good morals and wrongful in and of itself, and which necessarily causes injury and is done intentionally." It is thus seen that the fiction of malice is sufficient, under § 17 (2) to prevent a discharge of debts which are liabilities for malicious injury to the person or property of another. In *Tinker* v. *Colwell,* the "malicious" act was criminal conversation with plaintiff's wife; in *Parker* v. *Brittain,* 120 Md. 428, 87 Atl. 756, slander; in *Hallagan* v. *Dowell,* 139 N. W. 833, conversion of money; in *In re Munro,* 197 Fed. 450, wrongfully keeping lessee's wife off land by means of force and threats; in *Bever* v. *Swecker,* 138 Ia. 721, 116 N. W. 704, taking plaintiff's cattle without his consent; in *In re Halper,* 143 N. Y. Supp. 1005, 82 Misc. 205, mistakenly and negligently giving pure carbolic acid instead of diluted. But in *Tompkins* v. *Williams,* 122 N. Y. Supp. 152, in which chloral was given an intoxicated guest at an inn to keep him quiet and to prevent injury to himself and others, the act was held not "malicious," two of the five judges dissenting. The first five cases are clearly within the rules laid down in the *Prosser* and *Colwell* cases, supra, but the last two cases are harder of determination. It would be interesting to note whether the acts would have been done without just cause or excuse, within the meaning of the *Prosser* case, or in "willful disregard of what was known to be his duty, etc.", within the meaning of the *Tinker* case— that is whether malice would be implied—if in the latter case the defendant had mistaken plaintiff's wife for his own or in the *Bever* case, the cattle for his own, or in the *Tompkins* case, had intended to administer less chloral but someone had increased the dose while defendant's back was turned, or in the *Halper* case someone had placed an incorrect label on the bottle.